

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
TEXARKANA DIVISION**

UNITED STATES OF AMERICA

§

V.

§

5:09-CR-2

§

MARIANO RODRIGUEZ, JR.

§

§

**REPORT AND RECOMMENDATION OF
THE UNITED STATES MAGISTRATE JUDGE**

On October 27, 2009, the Court held a hearing on the Government's Petition to Revoke Supervised Release. The Government was represented by Assistant United States Attorney Denise Simpson. Defendant was represented by Al Smith.

Mariano Rodriguez, Jr. ("Defendant" or "Mr. Rodriguez") was sentenced on October 1, 2002, before The Honorable Royal Furgeson of the Western District of Texas after pleading guilty to the offense of Conspiracy to Possess With Intent to Distribute Marijuana, a Class B felony. This offense carried a statutory maximum imprisonment term of 40 years. The guideline imprisonment range, based on a total offense level of 18 and a criminal history category of II, was 30 to 37 months. Mr. Rodriguez was subsequently sentenced to 36 months imprisonment followed by a four-year term of supervised release subject to the standard conditions of release, plus special conditions to include abstaining from alcohol and/or all other intoxicants during the term of supervision, refraining from any unlawful use of a controlled substance, and not residing where firearms are possessed or stored. On January 16, 2003, Judge Furgeson ordered the term of imprisonment be reduced to four months based on the offender providing substantial assistance. On January 30, 2003, Mr. Rodriguez completed his period of imprisonment and began service of the initial supervision term.

On April 29, 2004, Defendant appeared before the Honorable John McBryde, U.S. District

Judge for the Northern District of Texas, for a revocation hearing. Mr. Rodriguez was revoked and sentenced to eighteen months imprisonment followed by a 36 month term of supervised release. On February 28, 2008 Mr. Rodriguez appeared before the Honorable John McBryde for a second revocation hearing. Mr. Rodriguez was revoked and sentenced to six months imprisonment followed by a twelve month term of supervised release. On July 31, 2008, Mr. Rodriguez began his current term of supervised release. On December 15, 2008, jurisdiction of this case was accepted by the Honorable David Folsom, Chief Judge of the Eastern District of Texas.

In its petition to revoke, the Government alleges Defendant violated the following conditions:

1) **Defendant shall not commit another federal, state, or local crime.** Specifically, the Government alleges as follows. On or about October 19, 2008, Mr. Rodriguez committed the offense of aggravated sexual assault, a 1st degree felony; kidnapping, a 3rd degree felony; and unlawful restraint less than 17 years of age, a state jail felony, in Titus County, Texas. As of the date of the petition, Mr. Rodriguez had an active warrant out of Titus County, Texas, and had not been arrested.

2) **Defendant shall notify the probation officer ten days prior to any change of residence or employment.** Specifically, the Government alleges as follows. On January 13, 2009, Investigator Cesar Munoz with the Mt. Pleasant Police Department informed U.S. Probation that Mr. Rodriguez no longer resides at 1112 W. 6th Street, Mt. Pleasant, Texas. Mr. Rodriguez has failed to inform U.S. Probation of his whereabouts at this time. On January 13, 2009, the manager at El Chico Café informed U.S. Probation that Mr. Rodriguez has not been employed at El Chico Café, 2506 W. Ferguson Road, Mt. Pleasant, Texas, for a couple months. Mr. Rodriguez has failed to notify U.S. Probation of his change of employment.

3) Defendant shall report to the Probation Officer and shall submit a truthful and complete written report within the first five days of each month. Specifically, the Government alleges as follows. Mr. Rodriguez failed to submit a written monthly report within the first five days of November 2008. Mr. Rodriguez failed to submit a written monthly report within the first five days of December 2008. Mr. Rodriguez failed to submit a written monthly report within the first five days of January 2009.

The Court scheduled a revocation hearing October 27, 2009. At the hearing on the Government's petition and after consenting to the undersigned's taking the plea, Defendant pled true to the first portion of the first allegation regarding the offense of aggravated sexual assault, a 1st degree felony, in Titus County, Texas. The Government dismissed the remaining portions of the first allegation regarding the offense of kidnapping, a 3rd degree felony, and unlawful restraint less than 17 years of age, a state jail felony, in Titus County, Texas. Defendant also pled true to the second and third allegations contained in the Government's petition. Based upon Defendant's plea of true to the first portion of the first allegation as well as the second and third allegations, the Court found Defendant did violate his conditions of supervised release as alleged in the U.S. Probation Office's petition.

The Court thereafter recommended that the term of supervised release be revoked and the sentence, which was agreed upon by the parties, be imposed as follows: Pursuant to the Sentencing Reform Act of 1984, it is the recommended judgment of the Court that Defendant be committed to the custody of the Bureau of Prisons to be imprisoned for a term of twelve (12) months to run consecutive to the state court term of imprisonment that has been imposed for the underlying aggravated sexual assault offense in Cause No. 16,179. Based on the foregoing, it is

RECOMMENDED that Defendant's plea of true to the first portion of the first allegation and the second and third allegations be **ACCEPTED**. It is further

RECOMMENDED that Defendant's supervised release be **REVOKED**. It is further

RECOMMENDED that Defendant be committed to the custody of the Bureau of Prisons to be imprisoned for a term of twelve (12) months to run consecutive to the state court term of imprisonment that has been imposed for the underlying aggravated sexual assault offense in Cause No. 16,179. It is further

RECOMMENDED that the Court request that the Bureau of Prisons designate the Texarkana, Texas Federal Correctional Institution or, if that is not possible, the Beaumont, Texas Federal Correctional Institution for service of sentence. The Court requests the Bureau of Prisons not designate the Federal Correctional Institution in Fort Worth, Texas for service of sentence.

The parties were informed of the right to file objections to the recommendations as set forth above. The parties waived their objections.

Defendant was also advised that he has the right to be present with counsel, to speak in his own behalf, and to have counsel speak in his behalf before any additional sentence is imposed. Defendant signed a written waiver of his right to be present and speak, and his right to have counsel present and speak, before the district judge imposes the recommended sentence.

SIGNED this 28th day of October, 2009.


CAROLINE M. CRAVEN
UNITED STATES MAGISTRATE JUDGE